

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM T. KOCH,

Defendant.

Case No. 1:13CR70

Cleveland, Ohio

Thursday, January 17, 2013

3:20 p.m.

TRANSCRIPT OF PRELIMINARY EXAMINATION AND DETENTION HEARING
BEFORE THE HONORABLE WILLIAM H. BAUGHMAN, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 JANUARY 17, 2013, 1:39 A.M.

2 THE DEPUTY CLERK: This Honorable Court is now in
3 session pursuant to recess. The Honorable William H.
4 Baughman, Junior, United States Magistrate Judge presiding.

5 Please be seated.

6 Please make sure that all cell phones and other
7 electronic devices are turned off. The taking of photos,
8 the making of audio/video recordings, and broadcasting of
9 any kind is prohibited. If this court order is not obeyed,
10 you will forfeit your device and subject yourself to further
11 sanctions.

12 THE COURT: Ms. Hach, call the case.

13 THE DEPUTY CLERK: Your Honor, the case before
14 the Court this afternoon is United States of America versus
15 William T. Koch, bearing Case Number 1:13MJ9010.

16 THE COURT: Counsel for the United States, are
17 you ready to proceed?

18 MR. SULLIVAN: Yes, Judge. On behalf of the
19 United States of America, Michael A. Sullivan.

20 THE COURT: And counsel for Mr. Koch, are you
21 ready to proceed?

22 MR. BRYAN: Edward Bryan on behalf of Mr. Koch.
23 Yes, Your Honor.

24 THE COURT: We're here today for a detention
25 hearing and a preliminary hearing in this matter.

1 Mr. Sullivan, you may proceed.

2 MR. SULLIVAN: Thank you.

3 The United States calls Kelly Liberti.

4 THE COURT: Ms. Liberti, please come forward and
5 be sworn.

6 KELLY LIBERTI,
7 of lawful age, a witness called by the Government,
8 being first duly placed under oath, was examined
9 and testified as follows:

10 DIRECT EXAMINATION OF KELLY LIBERTI

11 BY MR. SULLIVAN:

12 Q. Good afternoon. Would you please state your name and
13 spell your last name for the record?

14 A. Kelly Liberti, L-I-B-E-R-T-I.

15 Q. And by whom are you employed?

16 A. By the FBI.

17 Q. In what capacity?

18 A. As a special agent.

19 Q. And how long have you been so employed?

20 A. Seventeen years.

21 Q. Where are you currently assigned?

22 A. To the Elyria resident agency.

23 Q. Okay. And in that capacity, are you familiar with the
24 facts and circumstances regarding the investigation of
25 William T. Koch?

1 A. Yes, I am.

2 Q. All right. And in furtherance of that investigation,
3 did you prepare an affidavit in support of the criminal
4 complaint that brings us here today?

5 A. I did.

6 Q. And have you had a chance to review that affidavit?

7 A. I have.

8 Q. And as you sit here today, do you reaffirm what's
9 contained in that affidavit?

10 A. I do.

11 Q. Previously, specifically September 20 of 2012, did you
12 present an affidavit in support of an application for a
13 search warrant in this case?

14 A. I did.

15 Q. And did you prepare that affidavit?

16 A. Yes, I did.

17 Q. Have you had an opportunity to review that affidavit?

18 A. I have.

19 Q. I'm going to show you what's been marked as
20 Government's Exhibit 1 for identification and ask you if you
21 recognize that?

22 A. I do.

23 Q. And is that the affidavit we just spoke of?

24 A. It is.

25 Q. And as you sit here today, do you again reaffirm all

1 the facts -- or do you reaffirm all the facts as contained
2 in that affidavit?

3 A. Yes.

4 Q. All right. Can you detail for us the chronology of
5 this investigation?

6 A. In August of 2011 I received information from our
7 office in San Francisco that a young actor, age 13, had
8 received a text message asking him for naked pictures of
9 himself or, the sender of the text said, "If you don't send
10 a naked picture, I will make your life a living hell."

11 In investigating that text message, we determined that
12 it had been sent by a user at 26178 Osborne Road in Columbia
13 Station, Ohio.

14 Agent Lisa Hack and I went to that address. We
15 interviewed William J. Koch and William T. Koch about these
16 text messages.

17 And during those interviews, William T. Koch did admit
18 that he had sent those. He was aware of the victim's age
19 and told us he would not do it anymore.

20 Q. Now, when you say it was a young actor, an actor in
21 what?

22 A. The actor was one of the boys who played Billy in the
23 Broadway musical Billy Elliot. And that production tours
24 across the United States.

25 So at the time the text message was received, he was

1 performing in San Francisco.

2 Q. So on that date on August 18 when you -- of 2011 when
3 you spoke to Mr. William T. Koch, did you have a
4 conversation with him about Billy Elliot as well?

5 A. Yes. He told us that Billy Elliot was his life, that
6 he loved the musical. He made trips to go see it to various
7 cities and was on the chat rooms, the forums online, you
8 know, chatting.

9 Q. Okay. And while you were actually there interviewing
10 him, did you become aware of another separate investigation
11 that had occurred at that same house?

12 A. We did. We became aware through the statements that
13 were made by both of the Kochs that the Lorain County
14 Sheriff's Department had also executed a search warrant
15 previously and had seized computers and electronic devices
16 from the home.

17 Q. And do you know what the nature of that investigation
18 was for?

19 A. Yes. In July of 2010, the Lorain County sheriff's
20 office had received an ICAC report that someone at 26178
21 Osborne Road, Columbia Station, Ohio, had been downloading
22 and sharing pornography.

23 They executed a search warrant in December of 2010 and
24 seized three computers from the home.

25 Q. Okay. And have you been -- subsequently, are you

1 aware of the results of any forensic examination of those
2 computers?

3 A. Yes, I am.

4 Q. And can you just briefly tell us about that.

5 A. The Lorain County sheriff's office seized a Dell
6 tower, a MacBook, and a Toshiba laptop.

7 The Toshiba laptop had belonged to William T. Koch up
8 until about a month before the search warrant was executed
9 by Lorain County.

10 He had then purchased a MacBook which he had been
11 using for approximately one month prior to the search.

12 Forensic exams to date have shown child pornography
13 has been found on all threes of these devices.

14 Q. You mentioned the MacBook and the Toshiba laptop.
15 What was the third one?

16 A. The Dell tower.

17 Q. Oh, I see, okay.

18 And in addition, on the Toshiba laptop was there
19 anything else on there that would be relevant for your
20 investigation?

21 A. On the Toshiba laptop, they found Google searches for
22 the following searches: Cracking Facebook passwords,
23 stealing Facebook user names and passwords, beginner
24 hacking, Facebook hacking, how to hack any Facebook, how to
25 steal identities, how to use the SpyAgent program, how to

1 find the last digits of a social security number, how does a
2 preteen know if he is gay, and how do you know if a preteen
3 is gay.

4 Q. Okay.

5 A. They also found multiple visits to Facebook pages for
6 actors starring in the Billy Elliot production?

7 Q. Okay. All right. And while you were at that -- while
8 you were at the house on August 18, 2011, did you have any
9 conversation with William T. Koch about the child
10 pornography investigation?

11 A. We did. At that time he told us that it was his
12 father who had downloaded the child pornography and his
13 father had threatened him if he told anyone.

14 Q. Okay. But again, the results of the investigation
15 disclosed the presence of child pornography on all three
16 computers, including the two that were used by William T.
17 Koch?

18 A. Yes.

19 Q. So just if you can maybe just provide us just a
20 timeline of activities, what else did your investigation
21 reveal?

22 A. Our investigation showed that as early as December,
23 2010, child actors in the Billy Elliot production were
24 receiving -- all receiving very similar text messages.

25 Beginning in December 2010, on the 19th, Victim 1, who

1 at that time was age 13, had received messages that his
2 Facebook account was hacked. The very next day, Victim 1
3 received a text message to send naked pictures in exchange
4 for the Facebook account back.

5 In June of 2011, Victim Number 2, the victim from San
6 Francisco, received text messages asking for naked pictures
7 or his life would become a living hell.

8 In February, 2012, Victim Number 1's Skype and Yahoo
9 accounts were hacked.

10 February 25 and 26, Victim Number 3, a 15-year-old,
11 received a Facebook message.

12 Q. I'm going to stop you one second.

13 A. Sure.

14 Q. Couple things. One, first of all, you're kind of
15 giving us an overview. In the affidavit which we have
16 marked as Government's Exhibit 1, is there more detail about
17 these communications between the defendant and these
18 different actors?

19 A. Yes. In the affidavit the text messages are described
20 in full.

21 Q. Okay. And now, Victim Number I think 3, is this the
22 one victim that we're talking about, the only victim that we
23 know of that is not a Billy Elliot actor?

24 A. That is correct.

25 Q. Okay. And tell us about Victim Number -- and then

1 just to be clear, Victim Number 3 is the victim related to
2 the charge in the criminal complaint we're standing here
3 for?

4 A. Yes, it is.

5 Q. All right. Go ahead.

6 A. Victim Number 3 received a Facebook message from
7 someone named Ariella Gold wanting to chat on Facebook.

8 Q. And this is back in February of 2012?

9 A. That was back in February of 2012. It went
10 unanswered.

11 Received the same type of message in March of 2012.
12 That also was not answered.

13 On March 14, 2012, Victim Number 4, a Billy Elliot
14 actor, age 11, received text messages asking him to get on
15 Skype. And his younger brother also received text messages
16 asking him to get on Skype when his parents were not around.

17 In May 2012 -- and both of those were unanswered.

18 Q. Okay.

19 A. In May, 2012, a local actor in the Cleveland area who
20 was 11 years old received a text message from William T.
21 Koch saying, "Hey, I want to tell you that I smoke pot, I'm
22 gay, and I've done bad things." That also went unanswered.

23 Q. Now, just with that one, you said he is a local actor.
24 Where does he act?

25 A. This was a local actor who was part of a group here

1 called the Olmsted Performing Arts Group.

2 Q. And did your investigation reveal whether or not Mr.
3 William T. Koch had any relationship with that group?

4 A. Yes. Mr. Koch had joined that group and was with them
5 for a short time. And he, after this text message was
6 received, he was asked to leave the group.

7 Q. I'm sorry. How old was that?

8 A. 11 years old.

9 Q. All right. So that was May of 2012. If we can move
10 forward.

11 A. In August, August 10, 2012, Victim Number 3 received
12 another Facebook message from Ariella Gold which was not
13 answered.

14 On August 24, Victim Number 4 received Skype messages
15 from someone pretending to be another Billy Elliot actor
16 asking for Victim Number 1's phone number and threatened to
17 make Victim Number 4's life a living hell if he did not
18 provide the phone number.

19 Q. Okay. I just want to be -- and on that, so you have
20 one Billy Elliot actor receiving a Skype message from
21 someone pretending to be another Billy Elliot actor asking
22 him for the phone number of yet a third Billy Elliot actor?

23 A. That's correct.

24 Q. Okay. Go ahead.

25 A. On August 31, 2012, Victim Number 1 received text

1 messages from an unknown person saying they needed to talk
2 to him.

3 On August 31, 2012, Victim Number 5, age 14, received
4 a series of text messages from someone calling themselves
5 Kelsey, asking sexually oriented questions, and then a
6 message that said, "Send me a pic, fucker, or I will tell
7 all your friends you are gay."

8 On September 4, 2012, Victim Number 6, age 13,
9 received a text message to "send a nude or your life will be
10 a living hell."

11 On September 5, 2012, Victim Number 6 was sent another
12 message to send a nude.

13 Victim Number 5 received text messages on September 8
14 and September 9, 2012 requesting nude photographs.

15 Also on September 9, 2012, Victim Number 3 received a
16 Facebook message from Ariella Gold offering to strip for
17 him. He did respond to that message, and he then Skyped
18 with the person he believed to be Ariella Gold. The person
19 he believed to be Ariella Gold sent him naked photographs of
20 a teen girl.

21 In exchange, Ariella Gold asked him to masturbate on
22 camera, which he did masturbate on camera, and he followed
23 Ariella Gold's directions.

24 After that, Ariella Gold asked the victim to show his
25 face on camera. When he refused, Gold sent a message saying

1 that she was actually a 45-year-old man and that his
2 accounts were fake, and he told our victim, "You have to
3 have sex with your ten-year-old brother on camera or I will
4 distribute all these pictures of you masturbating to your
5 family and friends," because he had obtained the family and
6 friends contact list through Facebook.

7 Q. Okay.

8 A. On September 13, 2012, Victim Number 5 received
9 messages from someone pretending to be a Billy Elliot actor
10 asking for Victim Number 1's phone number. The person then
11 admitted that they weren't that bill Elliot actor but a
12 14-year-old girl. They then said, "If I don't get a nude
13 from you tonight, I will tell all your friends you fucked me
14 and make your life a living hell."

15 On September 13, 2012, Victim Number 6 received a
16 message saying, "If I don't get a nude picture, I will tell
17 all your friends you are gay and you fucked my brother."

18 On September 18, 2012, Victim Number 5 received text
19 messages threatening to hack his Facebook account and tell
20 everyone he is gay. He was also asked for a nude picture.
21 And then he received, the victim, received a picture of a
22 penis with a threat that the sender would tell everyone that
23 it belonged to Victim Number 5.

24 On September 24, a federal search warrant was executed
25 at the Koch residence. We seized electronics and all items

1 which could connect to the Internet along with more than 100
2 DVD's and disks of recordings of Broadway productions which
3 we learned were being sold online.

4 Q. Now, you participated in that search; is that correct?

5 A. Excuse me?

6 Q. You participated in that search?

7 A. Yes, I did.

8 Q. And had you submitted all that digital equipment for
9 forensic evaluation?

10 A. Yes, I have.

11 Q. Have you received any results back yet?

12 A. Not yet.

13 Q. All right. So when you went there on September 24,
14 was Mr. William T. Koch at home?

15 A. Yes, he was.

16 Q. Was anybody else at home?

17 A. His mother and his younger brother.

18 Q. Did you have a conversation with any of them?

19 A. I had a very brief conversation with Mr. Koch.

20 Q. And what was that, the nature of that conversation?

21 A. He asked what the search warrant was about. I
22 informed him that it was about text messages that were sent
23 to various actors of Billy Elliot. I talked a little bit
24 about the first victim.

25 After hearing about that, he said, "I don't want to

1 hear anymore. I want to talk to a lawyer."

2 Q. And did you have a conversation with his mother as
3 well?

4 A. I did not, but Agent Lisa Hack did.

5 Q. All right. And did she make her aware of the nature
6 of what was going on?

7 A. Yes, she did.

8 Q. And can you tell us -- and did she have any
9 conversation with William T. Koch's mother about William T.
10 Koch and his -- about him?

11 A. Yes, she did.

12 Q. Can you tell us what was said?

13 A. Sure. She told us that William T. Koch graduated from
14 high school in approximately 2007 or 2008. He was a very
15 good student with good grades.

16 He attended Cleveland State University as part of the
17 accounting program. He lived on campus for the first year.
18 When his grades started to slip, he moved back home. Once
19 he lived back at home, his grades were A's and B's.

20 His mother said he does not have a driver's license.
21 And despite having cerebral palsy, he is a good student who
22 definitely knows right from wrong and has good behavior. No
23 mental impairment at all.

24 She also told us, though, that sometimes he would tell
25 her that he needed to go Downtown Cleveland to take exams at

1 Cleveland State University. She would drive him downtown
2 for that purpose. And then hours later he would telephone
3 her and say he left and was out of town, usually to see a
4 Broadway Show.

5 Q. So he would leave the state?

6 A. Leave the state.

7 Q. On his own?

8 A. Yes.

9 Q. All right. Now -- and did she also -- did she
10 indicate at that time something about a problem with him,
11 maybe a previous iPhone and some spending habits?

12 A. Yes. She had taken his -- she told Agent Hack that
13 she had taken his iPhone from him about three months before
14 the search warrant because she had discovered he had been
15 making purchases without her knowledge, that he had
16 accumulated approximately \$70,000 in credit card debt that
17 was rung up in his father's name.

18 Q. Okay. Now, I just want to go back briefly. When you
19 spoke of all those text messages that these different Billy
20 Elliot actors had and some of the communication with this
21 young boy in Canada, did the two affidavits, both of which
22 we have discussed, the one that's marked as Government's
23 Exhibit 1 and the other one which accompanies the criminal
24 complaint, do they have details in there about investigation
25 that has traced the IP addresses?

1 A. Yes, they do.

2 Q. And does all that information, does it generally show
3 that all these communications have come from the same home
4 we've been talking about?

5 A. Yes. They all came from the IP address that is
6 registered to the Kochs.

7 Q. All right. So the federal search warrant was on
8 September 24 of 2012. And you made it clear to the Kochs
9 why you were there and taking all their equipment?

10 A. Yes, we did.

11 Q. All right. And do you know, did the Internet activity
12 occur subsequent to that?

13 A. Yes. We found out that in November, on or about
14 November 12, 2012, Victim Number 3's younger brother, who is
15 ten years old, received a Facebook friend request from
16 Ariella Gold.

17 Q. So that's the ten-year-old boy that Ariella Gold was
18 asking Victim Number 3 to have sex with?

19 A. Yes.

20 Q. Okay. So then he received a direct Facebook friend
21 request?

22 A. Yes.

23 Q. Okay. And do you know if some records from Facebook
24 had been subpoenaed?

25 A. Yes, they have.

1 Q. And does it show login times and such?

2 A. Yes.

3 Q. All right. And does it show whether or not Ariella
4 Gold was logged in on that date that you spoke of?

5 A. Yes. Ariella Gold was logged in on November 12.

6 Q. And does it show when the last time Ariella Gold was
7 logged in?

8 A. I believe it was November 28, 2012.

9 Q. All right. So did you recently swear out a criminal
10 complaint and get an arrest warrant?

11 A. Yes, I did.

12 Q. Did you also get an additional search warrant?

13 A. Yes, I did.

14 Q. And did you execute those?

15 A. We did.

16 Q. When was that?

17 A. We executed the warrant last Friday which was January
18 11, 2013.

19 Q. All right. And can you tell us if you found any
20 digital equipment at the Koch residence?

21 A. We found that all the electronics appeared to be
22 replaced. We seized three Motorola Droid Smartphones from
23 William T. Koch's mother, father, and brother.

24 We found an unsecured laptop computer that was used by
25 the whole family. It was on the floor in between the

1 kitchen and the dining room. It was not password protected.
2 Mr. and Mrs. Koch told us they did not know how to password
3 protect it.

4 We found -- the home was equipped with a wireless
5 router and a modem, an Xbox Live console which connects to
6 the Internet that was in Sean Koch's bedroom, the younger
7 brother, which he told us his brother did use.

8 We found a broken Toshiba laptop, a Play Station 2,
9 and more disks labeled to contain productions of Broadway
10 shows.

11 Q. All right. And then lastly, do you know, is
12 there -- as far as -- we've been talking about William T.
13 Koch. And the father is who?

14 A. William J. Koch.

15 Q. All right. And are you familiar whether or not
16 William J. Koch has any criminal history?

17 A. Yes. Mr. Koch was recently released from jail on a
18 one-year sentence for gross sexual imposition.

19 Q. And do you know any of the details of that case?

20 A. I spoke with Sergeant Stephen Klopfenstein from the
21 Brunswick Hills Police Department. He told us that his
22 police department had an investigation concerning Mr. Koch,
23 William T. Koch, and Mr. Koch's brother who is Mr. Reichle,
24 and Mr. Reichle's son which would be Mr. Koch's nephew. And
25 the case concerned rape charges against Mr. Reichle's -- or

1 concerning Mr. Reichle's daughters.

2 Q. And were they minors at the time of the --

3 A. Yes.

4 Q. All right. And as a result of that investigation, do
5 you know, did Mr. William J. Koch, what he was ultimately
6 charged with?

7 A. He was ultimately charged with gross sexual
8 imposition.

9 Q. Do you know what he was arrested for originally?

10 A. He was arrested for rape.

11 Q. And then he plead out to gross sexual imposition?

12 A. That's correct.

13 Q. And then he severed a year?

14 A. Approximately.

15 Q. Okay. And is he a registered sex offender?

16 A. Yes.

17 Q. All right.

18 MR. SULLIVAN: I have nothing further.

19 THE COURT: Mr. Bryan.

20 MR. BRYAN: Yes, thank you.

21 CROSS-EXAMINATION OF KELLY LIBERTI

22 BY MR. BRYAN:

23 Q. Good afternoon, Special Agent.

24 A. Hello.

25 Q. Special Agent Liberti, this investigation literally

1 seems to be, based upon your affidavit, your search warrant
2 affidavit and the affidavit attached to your criminal
3 complaint, seems to have been taking place over a period of
4 years involving multiple law enforcement agencies, correct?

5 A. Yes.

6 Q. In fact, the first law enforcement agency that seemed
7 to have investigated the Koch residence was the Lorain
8 County Sheriff's Department?

9 A. Correct.

10 Q. And that was involving a child pornography
11 investigation that was taking place at that time?

12 A. Yes.

13 Q. And do you remember the date that that investigation
14 began?

15 A. July 23, 2010.

16 Q. Okay. So July 23, 2010 there was an investigation.
17 Did they have sort of a task force there in Lorain County
18 that was investigating? It says ICAC, the Ohio Internet
19 Crimes Against Children Task Force?

20 A. Yes.

21 Q. And so an investigator, David Frattare or Frattare,
22 (pronouncing) was the investigator who -- well, I guess, was
23 he with Lorain County sheriff's? Or was he with BCI or
24 someone like that?

25 A. He was on the task force.

1 Q. Okay. Do you know what agency he's employed by?

2 A. No, I do not.

3 Q. Okay. You just know he's a member of the task force?

4 A. Correct.

5 Q. And using peer-to-peer software, he logged
6 onto -- this IP address in paragraph 21 of your -- do you
7 have your affidavit in front of you?

8 A. I have part of it.

9 Q. The search warrant affidavit.

10 A. Um-hum.

11 Q. The IP address that's listed is 173.88.214.63,
12 correct?

13 A. Correct.

14 Q. And is that the IP address that's associated with the
15 Koch residence?

16 A. Yes.

17 Q. Okay. And that IP -- a computer associated with that
18 IP address was using LimeWire to allow the browsing of a
19 shared folder, correct?

20 A. The subpoena result showed that on the date and time
21 the files were downloaded, that at that day and time the IP
22 address was assigned to the account registered to William
23 Koch.

24 Q. Okay. Now, I'm not -- I'm certainly not anywhere near
25 a computer expert, and I know you probably aren't either.

1 But your training has probably required you to learn a
2 little bit more about IP addresses than me.

3 Can you explain in essence what an IP address is?

4 A. An IP address is like your -- your computer's home
5 address. Just like your house has an address, you live at
6 123 Main Street, your computer also has an address.

7 Now, your computer's address, though, as an IP
8 address, may not stay the same throughout time. That's why
9 when we request IP address information, we make it very
10 specific to a date and time of a certain download so that we
11 know where that address was assigned on that date at that
12 time.

13 Q. Can you explain to me why it may not stay the same
14 throughout time?

15 A. No, I can't. I'm not an expert in reassigning IP
16 address numbers.

17 Q. So IP address numbers can be reassigned to different
18 computers?

19 A. I don't know about reassigned. I know they do change
20 over time.

21 Q. They can change over time? And the reason I ask that
22 question -- and we will go forward in your affidavit --
23 there are parts in your affidavit where information wasn't
24 available for certain IP addresses, correct?

25 A. Correct.

1 Q. And we will go through that here in a minute.

2 But basically the investigation began with the Koch
3 residence in Lorain County with the Lorain County sheriff's
4 office, correct?

5 A. Correct.

6 Q. And that was back in 2010?

7 A. Correct.

8 Q. Okay. When was the first time that you became aware
9 of the Kochs and the Koch residence?

10 A. When I received a lead in August of 2011 from San
11 Francisco.

12 Q. Okay. And that concerned messages being sent to one
13 of the Billy Elliot actors out in San Francisco?

14 A. Correct.

15 Q. And that individual had received text messages from a
16 certain telephone number, correct?

17 A. Yes.

18 Q. Would that be paragraph 25 of your affidavit?

19 A. Yes.

20 Q. Okay. And in those text messages, there is obviously
21 some inappropriate communication that's taking place?

22 A. Correct.

23 Q. And there is a request for a nude photo, and saying
24 that if they didn't provide the nude photo, that they would
25 make their life a living hell or something like that?

1 A. Yes.

2 Q. Okay. Obviously that individual never sent the nude
3 photo, correct?

4 A. Correct.

5 Q. And do you know if that person received any further
6 text messages after they refused to send a nude photo?

7 A. I don't believe anymore were received.

8 Q. Okay. So there was the one threat, but there wasn't a
9 follow-up or anything like that?

10 A. Yes.

11 Q. Okay. And at the time the individual was in San
12 Francisco?

13 A. Yes.

14 Q. Okay. And again, I guess there is discussions in
15 paragraph 26 about "Textfree is a free application by Pinger
16 that runs on an Apple iOS and Android devices. . ." Is that
17 an Apple iPhone? ". . . and Android devices and uses the
18 carrier's data connection or Wi-Fi connection to send text
19 messages to mobile phones"; correct?

20 A. Um-hum, yes.

21 Q. And you had an administrative subpoena served on
22 Pinger, I guess, the service provider for that?

23 A. Yes.

24 Q. And it says that the telephone number revealed an
25 Apple user I.D. that came back to William J. Koch, Osborne

1 Road, Columbia Station, correct?

2 A. Correct.

3 Q. Now, do you know from Pinger whether or not the
4 information regarding the address that that number came back
5 to could have been provided -- or how it was provided?

6 A. Pinger didn't provide the address. Pinger provided
7 the Apple user I.D.

8 Q. Okay.

9 A. And the Apple user I.D. came back to Mr. -- basically
10 tells you that that device is registered to this person.

11 Q. Okay. And the Apple -- so the Apple user I.D. isn't
12 contained in paragraph 27, correct?

13 A. Correct.

14 Q. So it just says Apple user I.D.

15 Now, are you aware, with the training that you
16 received concerning computer crimes, how unique the
17 user -- I know that there is only one user I.D. for each
18 device, but whether or not those devices' user I.D.'s can be
19 masked or used in any other way?

20 A. I would probably have to work at Apple to know that,
21 yeah, I don't -- I'm not familiar with that.

22 Q. I mean, you testified somewhat about people hacking
23 other people's FaceBook accounts and hacking their other
24 Internet accounts and things like that?

25 A. Well, I interviewed the statements that were made

1 about that and searches that were found.

2 Q. Right.

3 A. Not about the actual process.

4 Q. Okay. But do you know from your training and
5 experience in this area that people do have the ability to
6 hack other people's accounts and use their information?

7 A. No, I do not.

8 Q. To mask their own activities?

9 A. No, I do not.

10 Q. Are you saying you don't know --

11 A. For an Apple I.D. number?

12 Q. Correct.

13 A. I do not.

14 Q. So you're saying you don't know if that's possible or
15 that's not possible? You don't know from your own
16 experience?

17 A. I do not know if it is possible to hack someone's
18 Apple I.D. When you register your device, you have an
19 Apple -- your device has a user I.D. number.

20 Q. Okay. Or if that user I.D. could be masked by
21 somebody else and used?

22 A. I don't know that.

23 Q. Okay. Because of this information, though, you did go
24 and interview William Koch, my client, William T. Koch,
25 correct?

1 A. Correct.

2 Q. His father is William J. And he indicated that, to
3 you at that time he made admissions that he in fact was the
4 person who sent that text message to the actor in San
5 Francisco, correct?

6 A. Yes, he did.

7 Q. Okay. When you first met with Mr. Koch, do you
8 remember what you told him? Or what did you say to him when
9 you first met with him?

10 A. That we were conducting an investigation into a text
11 message received by a Billy Elliot actor and that our
12 investigation had shown that the text message was sent from
13 someone in that house.

14 Q. Okay. Did you indicate to him or did you -- that you
15 were prepared to seize all of his electronic devices in the
16 house at that time?

17 A. No, I did not at that time.

18 Q. And investigate the matter further if he wasn't
19 prepared to admit his involvement in that?

20 A. No. We asked him to look at his phone while we were
21 there, but not that -- we did not have a seizure warrant or
22 anything like that.

23 Q. Okay. Have you since -- did you seize that phone or
24 did you ever seize that phone?

25 A. No. We looked at it.

1 Q. Okay. Were you able to find the text message in the
2 memory of that phone?

3 A. No. That phone wasn't the device that was used.

4 Q. Okay. What was the device that was used?

5 A. The device that was used to send that text message was
6 actually an iPod Touch --

7 Q. Okay.

8 A. -- that William T. Koch had recently given to his
9 brother Sean.

10 Q. Okay.

11 A. Because he had replaced it with an iPhone?

12 Q. Okay. Were you able to examine the iPod Touch to see
13 if that text message was in the history of that phone?

14 A. The iPod Touch contained the application Textfree, but
15 we did not see the message. Those are easily deleted.

16 Q. Okay. But it had an app to use that same Textfree
17 program --

18 A. Correct.

19 Q. -- that could be used to send texts, correct?

20 A. Correct.

21 Q. And that's a very common app that lots of devices use,
22 correct?

23 A. I don't know how common it is. I've never used it
24 myself.

25 Q. Okay. But there was no corresponding text messages

1 found in any device at the Koch residence that reflected the
2 message that was sent to the actor?

3 A. Yeah, we did not seize the iPad so it was not
4 searched.

5 Q. Okay. But notwithstanding that, you had an admission
6 from Billy Koch that he is the one that sent the text
7 message anyway?

8 A. Correct.

9 Q. And you were satisfied with that admission that he was
10 the one who sent that text?

11 A. Correct.

12 Q. And he was never told at any time that he was going to
13 be placed under arrest if he didn't cooperate and may have
14 to come down to the FBI office or anything like that?

15 A. No.

16 Q. And be held in custody?

17 A. No. On that day, no.

18 Q. Okay. Now, you did notice on that day that Mr. Koch
19 appeared to have a disability, correct?

20 A. Correct.

21 Q. You learned that he suffers from cerebral palsy?

22 A. Correct.

23 Q. In any way did the fact that he suffers from cerebral
24 palsy play into your discretion not to place him under
25 arrest at that time?

1 A. No.

2 Q. Just the fact that you -- your discretion was based
3 upon the fact that maybe the text message attempted
4 something wrong but there was sort of like a no harm, no
5 foul situation?

6 A. No, actually it wasn't -- it's not my discretion. We
7 were following a lead from San Francisco, so we reported our
8 findings back to that office.

9 Q. Okay. So after that in 2011, you did learn that -- in
10 your affidavit there is a little bit of confusion because
11 the chronology sort of goes back in time. I guess you did
12 additional investigation.

13 You said on May 14, 2012 you spoke to a woman named
14 Karon who is the mother of another Billy Elliot actor,
15 correct?

16 A. Correct.

17 Q. And learned that he had received some text messages
18 back on December 19, 2010, correct?

19 A. Correct.

20 Q. And it was from -- was it from the same telephone
21 number that the other actor -- or this is actually a
22 different telephone number, correct?

23 A. It's a different number.

24 Q. Right. In paragraph 27, the telephone number is
25 424-248-8963, correct?

1 A. Correct.

2 Q. And so the telephone number for the December 19 call
3 was 406-420-8645, correct?

4 A. Correct.

5 Q. Now, this was something that had taken place two years
6 earlier?

7 A. Correct.

8 Q. Was this information that was saved by his mother?

9 A. Yeah --

10 Q. Or how did they know the dates and times?

11 A. Because she had actually filed a report with the FBI's
12 Internet fraud complaint center. So it was documented.

13 Q. Okay. So this was documented back in 2010, correct?

14 A. Yes.

15 Q. And this is sort of the same time period that the
16 Lorain County matter is coming to light?

17 A. It was actually about approximately two weeks after
18 Lorain County had executed their search warrant.

19 Q. Okay. And when they executed their search warrant,
20 what devices did they seize, if you recall?

21 A. They seized a Dell -- they seized a Dell tower, a
22 MacBook, and a Toshiba laptop.

23 Q. Okay. Do you know if the forensic examinations have
24 been done on those computers to reveal whether or not those
25 computers reflect activity that any one of those computers

1 were used to create these accounts, these fictitious
2 accounts, and also to hack the child actor's Facebook
3 account?

4 A. I do not. They are still conducting their forensic
5 exams to find child pornography.

6 Q. Okay. So there -- but has there been any attempt or
7 request to look in their -- again, I'm not sure where you
8 would look on the computer, but to see whether or not this
9 activity was perpetrated by any one of those --

10 A. There is a request pending.

11 Q. Okay. But we don't have the results of that request?

12 A. No.

13 Q. Okay. And so then you investigated the number that
14 was used in the December 19, 2010 incident, correct?

15 A. Correct.

16 Q. And it came back to Cable Vision Systems Corporation?

17 A. Correct.

18 Q. And where would they be located, if you recall?

19 A. I believe they were out west. I don't have an exact
20 address that I can remember offhand.

21 Q. Okay. An administrative subpoena served on Yahoo
22 showed an account -- and I have the blocked-out versus, but
23 a Yahoo.com account was created on Sunday, December 19, at
24 an IP address of 173.88.171.60, correct?

25 A. Um-hum, yes.

1 Q. Investigation in Cleveland showed at that date and
2 time that IP address belonged to Time Warner, RoadRunner
3 Hold Company for the same ISP previously shown used by Koch,
4 correct?

5 A. Correct.

6 Q. Now, this is the question I have for you: "An
7 administrative subpoena served on RoadRunner met with
8 negative results as the date and time were beyond
9 RoadRunner's retention period." What does that mean?

10 A. RoadRunner only holds information for so long on IP
11 addresses because they do change. So sometimes you will get
12 a letter back from them saying that the date and time you
13 requested are beyond our retention period.

14 Q. Okay. So when this paragraph says at the bottom of
15 paragraph 30, "Investigation in Cleveland showed at that
16 date and time that IP address belonged to Time Warner Cable,
17 RoadRunner, the same ISP. . ." That's Internet service
18 provider, correct?

19 A. Correct.

20 Q. ". . . previously shown used by Koch," you're talking
21 about the general Internet service provider that is not only
22 used by the Kochs but is used by literally tens of thousands
23 of other people, correct?

24 A. No.

25 Q. The company? The Internet service provider is the

1 company, correct?

2 A. The Internet service provider is the company.

3 Q. Who provides Internet service to tens of thousands of
4 customers, correct?

5 A. Yes.

6 Q. And it's the same company that provided the service to
7 the Kochs as well as tens of thousands of others?

8 A. Correct.

9 Q. But the IP address -- or excuse me, because of the
10 length, the passage of time or whatever, they weren't able
11 to isolate that specific IP address to the Koch residence,
12 correct?

13 A. Too much time had gone by, yes.

14 Q. Okay. Do you have any evidence whatsoever that that
15 IP address was ever used by the Kochs or at the Koch
16 residence, the 173.88.171.60?

17 A. I would have to look through the rest of the
18 affidavit. There are several IP addresses in here. Offhand
19 I can't answer that question.

20 Q. But I mean, if that IP address had been associated
21 with the Kochs at any time, you surely would have reflected
22 that in the affidavit, correct?

23 A. There are several IP addresses that are reflected in
24 the affidavit. I would have to go through it paragraph by
25 paragraph, because there are several that came back to that

1 address.

2 Q. Right. Okay. But at least in this paragraph of the
3 affidavit, you're not saying that that IP address came back
4 to the Koch residence, correct?

5 A. Correct.

6 Q. Just that it was the same Internet service provider as
7 the Kochs?

8 A. Correct.

9 Q. Okay. So going then on to paragraph 31, on February
10 6, 2012 there is a question about the actor's Skype account,
11 and his Yahoo e-mail account were both hacked. Again, the
12 show had just left Cincinnati, Ohio and was in Pittsburgh,
13 Pennsylvania, the next performance, when this occurred.

14 We're jumping from the 2010 incident now to the
15 February 26, 2012 incident, correct?

16 A. Correct.

17 Q. And so you used -- administrative subpoenas were
18 served on Yahoo, and the account was hacked. It showed the
19 account was accessed by an IP address listed as
20 173.88.161.81, correct?

21 A. Correct.

22 Q. And this was the same Internet service provider that
23 the Kochs used, right?

24 A. Correct.

25 Q. As well as tens of thousands of other people, correct?

1 A. Correct.

2 Q. Do you know Time Warner Cable's reach, this RoadRunner
3 holding company? Is this just an Ohio company, or is this
4 northeast United States or --

5 A. No, I don't know that.

6 Q. Okay. But this subpoena served on RoadRunner for this
7 IP address, again says "met with negative results as the
8 date and time are beyond RoadRunner's retention period,"
9 correct?

10 A. Correct.

11 Q. So as it relates to that IP address, you don't have
12 specific evidence that this is registered to the Koch
13 address, correct?

14 A. Correct.

15 Q. Okay. And so then the next paragraph, paragraph 32,
16 May 16, 2012, September 5, 2012, spoke with another mother
17 of one of the Billy Elliot actors. He said that -- or she
18 said that on March 14 he received a series of text messages
19 when he was 11 years old. You list the nature of the text
20 message. There was a telephone number recovered. Revealed
21 the number to be provided by Textfree. Administrative
22 subpoena results received from Pinger for Textfree phone
23 said it came from an IP address that was 173.88.16.81 [as
24 spoken] which is the same IP address in paragraph 31,
25 correct?

1 A. Correct.

2 Q. And again, because of the passage of time, that IP
3 address couldn't be matched to the Koch residence or any
4 other residence at that time, correct?

5 A. Correct.

6 Q. Okay. And then on August 24, 2012, there were text
7 messages to another Billy Elliot actor. So it went on.

8 And again, similar threats were made about
9 leaving -- for them to do things, like give me so and so's
10 telephone number.

11 Do you know if those demands were ever met by any of
12 the actors?

13 A. They were not.

14 Q. Okay. And nothing happened, right? I mean, they
15 didn't continue to -- the texter didn't continue to text
16 after the demands were made? They made one attempt?

17 A. No, that's not correct.

18 Q. Okay. Paragraph 36, again we're back to Karen. She's
19 the mother of the Billy Elliot actor that was in San
20 Francisco?

21 A. No.

22 Q. She was -- okay.

23 But on August 31, 2012, August -- her son received
24 another series of text messages. The message was: I will
25 need to talk to you. Something very important. Is this

1 blank's number? And then there was a number, 301-852-6882
2 was the Textfree number.

3 Again, the same Internet service provider records were
4 sought. IP address of 173.88.171.174. Results, Time
5 Warner, and that one is subscribed to William Koch at
6 Osborne Road, correct?

7 A. Correct.

8 Q. And that's because it's a more recent Internet service
9 provider -- it's a more recent time request, correct?

10 A. It is a more recent time request, so --

11 Q. All right.

12 A. I would be guessing to give that for a reason, but
13 that would be my assumption.

14 Q. Is this the same Internet service provider -- excuse
15 me, the same IP address that was identified back in 2010?

16 A. No. It's different.

17 Q. Okay. So the devices do have a different -- have a
18 different address then, correct? Like you said, the IP
19 address changes?

20 A. I don't know about devices. I know the IP address is
21 associated with your service.

22 Q. Um-hum. And this paragraph 38 talks about subpoena
23 requests from Apple for the Apple device that had a
24 registration number ending in 3D27, showed that it was
25 registered to W. T. Koch at Osborne Road in Columbia

1 Station, correct?

2 A. Correct.

3 Q. And then the application Textfree for iPad to get new
4 telephone numbers, twice on September 3, 2012, and September
5 12, 2012; correct?

6 A. Correct.

7 Q. And September 13, 2012?

8 A. Correct.

9 Q. And then these different e-mail addresses, do you have
10 that iPad?

11 A. I do.

12 Q. Okay. And has forensics been done on that iPad to
13 show that computer activity?

14 A. Not yet.

15 Q. Okay. You don't have that information yet?

16 A. No, it's not available yet.

17 Q. This Nine Mile Road, Auburn, Michigan, is that an
18 actual address that's listed in the bottom of paragraph 38?

19 A. I don't know if that's an actual address. It is not
20 the address of the person whose name was used to create an
21 account.

22 Q. Okay. Now, all of this information -- people continue
23 to receive text messages, and all of this information was
24 used in your affidavit for the search warrant that was
25 executed on September 24, correct?

1 A. Correct.

2 Q. And during the execution of that search warrant, you
3 seized not only the computers, but you seized the
4 Smartphones and other Internet accessible devices from the
5 home?

6 A. With the exception, we did not seize the router or the
7 modem, but the devices that connected to it.

8 Q. Okay. And at that time you said in November -- I
9 think you said specifically November -- was it November 19?
10 No -- November 12 you subpoenaed records from Facebook and
11 determined that you've identified him as Victim 3.

12 Now, that was the individual who was in Canada,
13 correct?

14 A. That's not the correct date. And for clarity, the
15 subpoena was issued by ICE.

16 Q. Okay. But by ICE assisting the Canadian authorities
17 because the Canadian authorities opened an investigation
18 based upon the text messages that were received from the
19 Canadian boy?

20 A. Correct.

21 Q. The 15-year-old, correct?

22 A. Correct.

23 Q. And he is the individual who was led to believe that
24 he was communicating with a teenage girl over the Internet?

25 A. With Ariella Gold.

1 Q. Okay. And he was led to believe that Ariella Gold was
2 interested in seeing naked pictures of himself by having
3 naked pictures of a teenage girl sent to him, correct?

4 A. Correct.

5 Q. Okay. And this individual, he's the only person out
6 of all the individuals who were targeted, based upon your
7 knowledge, who actually did go ahead and send an image of
8 himself engaged in sexually explicit conduct, correct?

9 A. Correct.

10 Q. Since that time, is he still the only individual that
11 you've been able to determine actually did what was asked of
12 him as far as sending sexually explicit conduct over the
13 Internet?

14 A. To my knowledge, yes.

15 Q. Throughout -- based upon all of your review of the
16 materials now in your possession and the investigation in
17 this case to date?

18 A. Based on what I know. But again, the forensics are
19 not done.

20 Q. And so in essence, relating now back to November 12,
21 2012, the subpoena served by ICE on Facebook revealed that
22 someone logged onto an Ariella Gold Facebook page and sent a
23 friend request to the teenaged boy's ten-year-old brother,
24 correct?

25 A. Correct.

1 Q. Who also had a Facebook page apparently?

2 A. Correct.

3 Q. Okay. I thought you had to be 13 to have a Facebook
4 page?

5 A. You do, but that does not stop anyone from creating
6 one.

7 Q. All right. And so -- this is just speculation, but
8 it's presumed that the person who knew about the
9 ten-year-old learned about the ten-year-old on the
10 15-year-old's Facebook page, his family contacts, things
11 like that?

12 A. I'm sorry. Can you repeat that?

13 Q. That the person who sent the friend request from
14 Ariella Gold learned about the ten-year-old from the
15 15-year-old's Facebook page?

16 A. Correct.

17 Q. Okay. And there was no message sent with that friend
18 request, correct?

19 A. Not to my knowledge.

20 Q. And you know Facebook has -- you have the ability to
21 not only make a friend request, but send a message at the
22 same time?

23 A. Yes.

24 Q. So it was just a simple friend request that would have
25 required the ten-year-old either to confirm the friend

1 request, to deny the friend request, or to ignore it,
2 correct?

3 A. Um-hum, yes.

4 Q. Okay. And when you then went to execute the arrest
5 warrant on William Koch on January 11, you determined that
6 there were electronics that were replaced in the home,
7 including Smartphones and a laptop, correct?

8 A. Correct.

9 Q. And those items have been seized?

10 A. Correct.

11 Q. Okay. They weren't -- the family wasn't under any
12 order not to get a new computer or get Smartphones or
13 anything like that at the time, correct?

14 A. No.

15 Q. You seized the items they had based upon your desire
16 to search those items based upon your investigation up until
17 the time you seized those items, correct?

18 A. Correct.

19 Q. And you seized those items so that you could search
20 those items for evidence that would support your
21 investigation or help shed more light on the investigation,
22 maybe help prove which devices were used to send different
23 messages and things like that, correct?

24 A. Um-hum, yes.

25 Q. Okay. Now, have you had the opportunity to examine

1 the items that were seized on January 11?

2 A. Not yet, no.

3 Q. Okay. So you don't know whether or not any of those
4 devices were used to access an Ariella Gold Facebook
5 account?

6 A. Not yet.

7 Q. To send a ten-year-old a friend request, correct?

8 A. Correct.

9 Q. And quite frankly, you really wouldn't need anything
10 special to do that? You could go to the public library, go
11 onto an Ariella Gold FaceBook account if you knew the
12 password, and send a friend request to anybody you wanted
13 to; correct?

14 A. I don't know.

15 Q. But we don't know if there is evidence yet on the Koch
16 family computers or Internet capable devices that those
17 devices were used to access an Ariella Gold FaceBook account
18 and send friend requests or messages or anything like that?

19 A. Well, actually Facebook provides an IP address from
20 where you're logged on. And that IP address came back to
21 26178 Osborne Road.

22 Q. So the IP address that was used to create the Ariella
23 Gold account?

24 A. Facebook was issued a subpoena for all account
25 information for Ariella Gold --

1 Q. Okay.

2 A. -- from August 1, 2012 to November 9, 2012. In
3 response they provided the logins, but additionally the IP
4 address for all the logins by Ariella Gold. That IP address
5 was then identified by RoadRunner as being subscribed to by
6 William Koch, 26178 Osborne Road, Columbia Station, Ohio.

7 Q. So the Ariella Gold account was created using a device
8 with the IP address that belonged to the Kochs?

9 A. That's correct. And the login activity also came from
10 that address.

11 Q. Now, you've testified concerning William J. Koch's
12 prior criminal conviction, correct?

13 A. Correct.

14 Q. You're aware that he has no other criminal
15 convictions, correct?

16 A. Not to my knowledge.

17 Q. And as it relates to the offense conduct in that case,
18 the allegations were made by foster children -- you
19 indicated his brother, that it was -- that he was
20 charged -- Mr. Koch was charged, his brother was charged,
21 and his brother's son was charged. All three were charged
22 with --

23 A. I don't know if the son was charged. This is the
24 information I received from Brunswick Hills. I know that
25 the two adult males were charged.

1 Q. Okay. Was the other son investigated?

2 A. Yes.

3 Q. Okay. Now, the offense conduct in that case, if you
4 recall, took place in 2005, correct, or the allegations were
5 that back in 2005 these girls accused their, I guess he is
6 their -- he is not their natural father. He is their foster
7 father?

8 A. I am not familiar with the exact relationship between
9 the two.

10 Q. Okay. Are you familiar with the ages of the girls who
11 made the allegations?

12 A. All I know is they were minors at the time.

13 Q. Do you know that they were 15 and 17 at the time?

14 A. Minors is what I know.

15 Q. Okay. And -- well, you testified that the men were
16 originally charged with rape, correct?

17 A. Correct.

18 Q. You know under Ohio law rape carries with it a very
19 severe sentence, correct?

20 A. Correct.

21 Q. And that these were allegations made by Mr. Koch's
22 brother-in-law's -- you don't know how they're related to
23 him. You believe they're his children of some type but you
24 don't know if they're foster children or stepchildren?

25 A. No. I testified to the information I received from

1 the officer in Brunswick Hills.

2 Q. Okay. And you're aware that then it was like several
3 years later that the charges were brought forward in 2009,
4 the allegations -- the alleged activity took place in 2005
5 and the allegations were made in 2009 when the girls were no
6 longer minors?

7 A. Yes.

8 Q. Okay. And based upon the allegations, charges were
9 brought, investigation was had, and a case was pending
10 against Mr. Koch and his brother-in-law, correct?

11 A. Correct.

12 Q. And Mr. Koch eventually entered into a plea agreement
13 to pleading to a GSI count and received a year in jail,
14 correct?

15 A. Correct.

16 Q. Do you know that Mr. Koch -- well, you already said
17 you don't know if he has any other record other than that?

18 A. I do not.

19 Q. In the pretrial services report there is some
20 reflection. It said that the investigator believed that Mr.
21 Koch may have been covering for Billy Koch, that they
22 believe that Billy was involved in these sex assaults as
23 well?

24 A. Actually those were statements made by William T.
25 Koch, that his dad took the rap for him. He made those

1 statements to several people in his performing arts group,
2 and those statements were then told to us when we conducted
3 interviews with those people.

4 Q. Okay. So -- well, but those statements then
5 were -- were those statements conveyed to Brunswick police,
6 or to the police?

7 A. Brunswick police told me initially that they
8 were -- they had investigated William T. Koch along with the
9 son of Mr. Reichle and that he was originally someone they
10 had looked at for hurting these girls.

11 Q. Right. Now, again, you don't know the ages of the
12 girls? You have no reason to doubt if I tell you at the
13 time of the offense conduct they were 15 and 17 at the time,
14 correct?

15 A. All I know is they were minors.

16 Q. But you do know the offense conduct took place in
17 2005, correct?

18 A. Yes.

19 Q. And you know that in 2005, Billy Koch would have been
20 15 years old himself, correct?

21 A. I'll take your word on the math.

22 Q. Okay. And you know, and you learned when you first
23 met Billy Koch, that he does have a physical disability?

24 A. Yes.

25 Q. And that he suffers from cerebral palsy?

1 A. Yes.

2 Q. Meaning his balance is poor and his strength is weak
3 in his extremities?

4 A. It affects everybody in a different way.

5 Q. Right. But he appeared to be affected by cerebral
6 palsy?

7 A. Yes.

8 Q. To the extent that if there was kids his same age who
9 were healthy, 15 or 17 years old, the likelihood of him
10 being able to prey upon them or even attempting to prey upon
11 them would be less likely based upon his physical condition?

12 A. I can't say that at all, no.

13 Q. Okay. Ultimately, though, he was never charged in
14 state court for the allegations that his father eventually
15 took a plea bargain to do a year in jail for, correct?

16 A. No, he was not.

17 MR. BRYAN: I have nothing further, Your Honor.

18 THE COURT: Any redirect limited to the scope of
19 cross?

20 MR. SULLIVAN: Just very brief.

21 REDIRECT EXAMINATION OF KELLY LIBERTI

22 BY MR. SULLIVAN:

23 Q. Agent, Mr. Bryan asked you a question about the
24 forensic examinations on the computers that were seized by
25 the Lorain County sheriff's office. And I believe they were

1 seized in December of 2010; is that right?

2 A. Yes, it is.

3 Q. And he asked you if there was any evidence in those
4 computers of Mr. Koch hacking into any accounts. I just
5 want to be clear. On those computers for the Lorain County,
6 they found some evidence on the Toshiba laptop about the
7 searches for how to hack into accounts; is that right?

8 A. Yes, they did.

9 Q. That Ariella Gold, the Facebook activity for that
10 account, when you got the results, when you reviewed the
11 results that came back from Facebook, did it show the
12 activity on the account?

13 A. Yes, it did.

14 Q. And could you just generally describe whether it was
15 often or rare?

16 A. The account showed almost daily logins to Facebook as
17 Ariella Gold from -- the subpoena covered August through
18 November. And in that time period of the subpoena, pretty
19 much every day, every other day, logins to that account.

20 Q. And was there a gap, though, in September?

21 A. Yes.

22 Q. Right after --

23 A. There was a -- there was a gap right after we executed
24 the September 24 search warrant to the first week in
25 November.

1 Q. Okay. And then just -- I think Mr. Bryan also asked
2 you if at any point that the Kochs were under any type of
3 order not to get anymore computer equipment? Do you
4 remember that question?

5 A. Yes, I do.

6 Q. Let me just ask you this. In August of 2011 when you
7 went to the home, Mr. Koch and Mrs. Koch were both home,
8 right?

9 A. Correct. Mrs. Koch left while we were there.

10 Q. But they were there -- she was there when you got
11 there?

12 A. Yes.

13 Q. So they were aware of the nature of your visit?

14 A. Yes.

15 Q. And they were aware of what was -- what William T.
16 Koch was accused of doing?

17 A. Yes.

18 Q. And then in September of 2012 when you went back a
19 year later and you actually did a search warrant and took
20 all their digital equipment, was Mrs. Koch home?

21 A. Yes, she was.

22 Q. And was she aware of what the allegations were
23 regarding her son?

24 A. Yes, she was.

25 Q. Okay. Thank you. I have nothing further.

1 THE COURT: Ms. Liberti, thank you. You may step
2 down.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Sullivan, any other witnesses?

5 MR. SULLIVAN: Judge, no. Subject to your
6 accepting Government's Exhibit 1 that's been marked for
7 identification as well as considering the affidavit in
8 support of the criminal complaint as well as the pretrial
9 services report, the United States would rest.

10 THE COURT: Any objection to the admission of
11 Government's Exhibit 1?

12 MR. BRYAN: No, Your Honor.

13 THE COURT: All right. Its admitted.

14 Any witnesses or proffers, Mr. Bryan?

15 MR. BRYAN: Your Honor, I would just proffer on
16 behalf of Mr. Koch, present in court today are his mother
17 and father. We've heard testimony regarding his father.
18 Ms. Liberti testified concerning what she knew about that
19 case.

20 I would proffer for the record that the complaining
21 witnesses in that case were 15 and 17 at the time of the
22 alleged offense conduct in 2005, that they were the foster
23 children of Mrs. Koch's sister and her brother-in-law, that
24 there were some problems in the family, and that the girls
25 made allegations in 2009 not only against their foster

1 father, then adoptive father -- I believe they were adopted
2 after they were -- while they were foster children they
3 became adopted, but they made allegations against other
4 people, including Mr. Koch.

5 Mr. Koch pled not guilty at his initial proceeding.
6 The case was pending for a period of time. He was
7 threatened with very serious charges, including rape and
8 sentences that were off the charts. And with the advice of
9 his attorney, he agreed to enter into a plea agreement where
10 actually the parties recommended the joint sentence -- a
11 joint recommendation of nine months of incarceration. But
12 the sentencing judge in Medina County didn't listen to the
13 recommendation but went ahead and sentenced Mr. Koch to a
14 period of 12 months of incarceration.

15 We would also proffer for the record that this is his
16 only offense, that he is a retiree, that he worked 32 years
17 at Lubrizol out in Avon, that he was a valued employee, that
18 Mr. Koch's mother works at a school cafeteria. They do have
19 another child in the home, Mr. Koch's younger brother, who
20 lives in the home.

21 Some of the devices that were -- that they saw when
22 Mr. Koch was arrested on January 11 were devices that were
23 purchased as Christmas presents, including the iPhone that
24 was a gift to Mr. Koch's younger brother, who is now 14, I
25 believe.

1 Mr. Koch was not given an iPhone. The devices were
2 used by the family during that period of time.

3 So we would proffer that for the record.

4 The Kochs are here on behalf of their son. They will
5 accept -- I don't want to say they accept custody, but they
6 will permit their son to remain to live with them in their
7 home under whatever conditions the Court deems appropriate,
8 including electronic monitoring and whatever supervision and
9 counseling and the like that this Court could impose.

10 So that's my proffer, and I'll reserve my further
11 comments.

12 THE COURT: Let's, first of all, take up probable
13 cause. Argument on probable cause, Mr. Sullivan?

14 MR. SULLIVAN: Judge, I think as is detailed in
15 the criminal complaint and the affidavit in support of the
16 criminal complaint as well as the testimony of Agent
17 Liberti, the evidence has established here today that on
18 September 9, 2012, the defendant did, from his home in the
19 Northern District of Ohio, communicate with a 15-year-old
20 boy in Canada. The IP addresses all come back to the home
21 where it occurred. And we know that -- actually, I think at
22 that time Mr. Koch's father was still incarcerated.

23 But he communicated with this 15-year-old boy in
24 Canada, pretending to be a 15-year-old girl, sent nude
25 images of a minor female to this Canadian boy, and in

1 exchange asked the boy to masturbate on the webcam. So it
2 charges him with using, persuading, inducing, enticing a
3 minor to engage in sexually explicit conduct for the purpose
4 of transmitting a live visual depiction of such conduct,
5 knowing that it would be transmitted using any means or
6 facility of interstate or foreign commerce.

7 So here it's pretty clear that he communicated with a
8 boy in Canada from his home in Ohio and enticed this boy to
9 masturbate on the webcam for the purpose of creating this
10 live visual depiction, which the boy did.

11 So it would be the government's position that probable
12 cause has been established in this case.

13 Do you want me to go on to detention?

14 THE COURT: No. Let's hear Mr. Bryan on probable
15 cause.

16 MR. BRYAN: Your Honor, I'll just be brief
17 regarding probable cause because the threshold is so low.

18 But the evidence presented today indicates that there
19 was a contact made with the 15-year-old in Canada from the
20 Facebook account attributable to a user named Ariella Gold.
21 Investigation has since revealed that that account is
22 affiliated with an IP address at the Koch residence in
23 Colombia Station, Ohio.

24 Mr. Koch did not make any admissions regarding the
25 activity, the inducing or the enticing that is alleged in

1 the complaint.

2 The evidence related to that, I would say, is in
3 equipoise in light of the fact that any number of people
4 could have access to a device that has an IP address at the
5 Columbia Station home.

6 I think all the other information has been presented
7 in an effort to demonstrate sort of a propensity that
8 similar things were being done using text messaging devices
9 or sending text messages to the various Billy Elliot actors
10 asking them to do similar things that ultimately this
11 individual in Canada was asked to do and then in fact did
12 do, apparently, under the mistaken impression that he was
13 sending images to a teenaged girl who had just sent him
14 images of herself in an undressed state.

15 So I would say at most the evidence is in equipoise.
16 I don't think the similarity between the two would take it
17 out of equipoise.

18 Obviously all of the information that has been
19 presented in the affidavits and in the agent's testimony
20 does raise concern. However, that concern and -- that
21 concern itself I don't think is evidence of probable cause.

22 So I would -- again, I'm not going to belabor this
23 point because I think the greater issue is the issue of bond
24 in this case. But I think there is at least an argument
25 that the evidence is sort of 50 percent.

1 THE COURT: All right. I'm going to find that
2 there is probable cause and then bind this case over to the
3 grand jury and they'll reexamine probable cause in that
4 forum.

5 Let's go on to detention.

6 MR. SULLIVAN: Thank you, Judge.

7 Judge, as you know, the U.S. code has a presumption
8 for detention in this matter because of the nature of the
9 charge. So there is a statutory presumption for detention.
10 And it would be the government's position that nothing that
11 has transpired today has rebutted that presumption, but in
12 fact it's been solidified and strengthened.

13 The evidence has shown that over the past two years,
14 two-and-a-half years, or a little bit over two years, Mr.
15 Koch has tormented at least six children.

16 And, you know, while I understand Mr. Bryan said that
17 did any of these kids comply with it and Agent Liberti said
18 no, other than the Canadian boy, the fact is these are
19 five -- other than the Canadian boy, we're talking about
20 five kids who are just actors in a Broadway play and they
21 have to live in the fear that someone is stalking them
22 because someone is sending them these text messages and
23 trying to coerce them into sending nude photographs and
24 making threats to them if they don't.

25 So he has engaged in this pattern where he has

1 tormented six children over the past two years. And that
2 would be bad enough. And this is -- you know, this takes
3 the expression, you know, fool me once shame on you, to a
4 different degree because he was talked to in August of 2011.
5 He was told "Stop doing this." He did it. And he kept
6 doing it.

7 And as you can see from the detail in the affidavit in
8 support of the search warrant, the activity got
9 progressively more aggressive and more threatening to these
10 kids.

11 So after he was visited by the FBI, instead of ceasing
12 and desisting, he ratcheted up his activity. He got more
13 threatening, more aggressive with these kids, including this
14 activity with the boy in Canada where he tried to extort
15 that boy in Canada to have sex with his ten-year-old brother
16 or else he was going to send nude pictures to all his
17 Facebook friends. I mean, to a 15-year-old child that's a
18 pretty heavy threat. And thankfully the young boy in Canada
19 didn't comply. But it's egregious conduct. And it's
20 egregious conduct that came after he was spoken to by the
21 FBI.

22 And then they go in September and take all his
23 computers. And within a short amount of time they have
24 computers again, and now he is actually trying to friend the
25 ten-year-old brother of the boy in Canada.

1 So, I mean, it's clear that he is a danger. He is a
2 danger to the community, and I understand certainly he has a
3 physical condition and I'm not -- I'm certainly cognizant of
4 that. But the fact is it has not prevented him from
5 graduating high school. It has not prevented him from
6 getting A's and B's in college. It does not prevent him
7 from traveling to New York and Chicago by himself to see
8 Broadway plays by himself unbeknownst to his parents.
9 Doesn't stop him from racking up \$70,000 worth of bills on
10 his father's account because he's using his father's credit
11 card to buy things and to travel and to buy equipment.

12 So while I'm certainly cognizant of the physical
13 condition, it has certainly not prevented him from carrying
14 on. And we know it has not prevented him from tormenting
15 six children across the country; internationally with
16 Canada.

17 So I certainly am expecting that Mr. Bryan will talk
18 at length about Mr. Koch's physical condition, and again,
19 not that we're unsympathetic toward it, but he is a danger.
20 He has exhibited that. He has been warned not once but
21 twice. And if you include the search warrant on behalf of
22 the Lorain County Sheriff's Department, I mean, you know,
23 they're visited by law enforcement three separate times, and
24 he's still engaging in the conduct.

25 So he is a danger to the community. And frankly,

1 Judge, the only place that he would have to go home would be
2 at his parents' house where he would be -- you know, his
3 mother was there for the first visit in August. She was
4 there for the search warrant in September. And yet she
5 sticks right in the kitchen a laptop with no protection on
6 it that he can use unsupervised whenever he wants.

7 So there is no supervision. There is no effort to
8 prevent him from engaging in this conduct. And his father
9 is a convicted -- a registered sex offender and a convicted
10 sex offender.

11 So I don't know that we can -- it's certainly
12 inappropriate to send someone charged with a sex offense
13 home to live with a registered sex offender, who, by the
14 way, he was a suspect with. But for him being a juvenile
15 and probably because of his physical condition, he may have
16 ended up being -- well, we don't know what would have
17 happened. But we know he was originally investigated as one
18 of the perpetrators of the crime for which his father did a
19 year in prison.

20 So, you know, Judge, there really is -- that's
21 certainly an inappropriate placement.

22 But beyond that, there is a presumption for detention,
23 and that presumption has not been rebutted. You know, there
24 is nothing that has rebutted that presumption here, and we
25 feel that the defendant should be detained.

1 THE COURT: Mr. Bryan.

2 MR. BRYAN: Your Honor, this is a very
3 complicated case. And there is a lot to be done between now
4 and when this case is finally resolved. This is the very
5 beginning stages of the case. Mr. Koch was just arrested
6 last Friday pursuant to the arrest warrant for him.

7 The investigation of this case has been taking place
8 over an extended period of time. The FBI has known about
9 Mr. Koch for an extended period of time. The FBI met with
10 Mr. Koch back in August of 2000 -- and the dates are all
11 over the place in my own mind, but they're clearly set forth
12 in the affidavit which has been made an exhibit to Your
13 Honor to be able to see the chronology of events here.

14 As much as I would like to be able to stand up and
15 defend against the charges today and try to make a defense
16 against the facts, we're not in a position to do that at
17 this stage.

18 We're rarely in a position to do that in any case.
19 Some cases the facts are a little easier than others to
20 consume and to digest and to figure out what's going on, but
21 in this case it's going to take a heck of a lot of pretrial
22 preparation.

23 The employment of our own computer forensic experts or
24 forensic computer experts, the review of the evidence that's
25 been seized here, and what I think the testimony of the

1 agent does reveal is that there is a lot to be done, not
2 only by the government yet because there are holes as it
3 relates to being able to establish specifically that Mr.
4 Koch is the person who even conducted all the activity
5 that's alleged to have been conducted.

6 This is cyberspace. Cyberspace is accessible not only
7 to Mr. Koch but accessible by anybody who has access to the
8 Internet.

9 Internet service providers and IP addresses are beyond
10 my understanding at this stage, but it's not beyond
11 my -- not beyond my belief that the ability of somebody to
12 mask themselves as someone else over the Internet exists.
13 It happens all the time. We hear about Anonymous in the
14 news, where they're going into other people's accounts. And
15 the FBI has been going after groups like Anonymous for years
16 and they can't nail them down and they can't find them
17 because they're using other people's servers. Quite
18 frankly, they use other people's IP addresses to do the work
19 that they're doing. So the ability exists out there.

20 What I'm suggesting to Your Honor is that this is not
21 an indefensible case. The allegations in the complaint are
22 very serious, and we're not trying to minimize that. They
23 are extremely serious. But that's not the determination at
24 this stage. I'm not asking you to find Mr. Koch not guilty
25 of the allegations against him. I don't think Mr.

1 Sullivan's asking you to find he's guilty.

2 I think there is sort of a certain tone in Mr.
3 Sullivan's voice that it just seems like it can't be anybody
4 else except for Mr. Koch. There is no way that he has a
5 defense to these charges.

6 Admittedly, weight of the evidence is one of the
7 determinations under 3142 to determine whether or not there
8 are any conditions or combinations of conditions sufficient
9 to warrant an individual's release pending trial in the
10 matter.

11 And I think that's the relevant determination here. I
12 think the presumption in favor of detention has been
13 rebutted by a number of factors, and not the least of which
14 is Mr. Koch's physical condition.

15 Quite frankly, because of computers, people who are
16 disabled have the ability to appear and do things that they
17 wouldn't be able to do without the assistance of computers.
18 Perhaps the world's most intelligent person, at least as it
19 relates to cosmology and astrophysics, is a person who can't
20 move a muscle of his body other than to twitch and use his
21 computer to communicate by using, you know, twitching and
22 changing his body in certain ways to talk through his
23 computer.

24 Literally, Stephen Hawking has the ability to commit
25 the same offense that's alleged that Mr. Koch has committed

1 in this case. But I don't think that anybody would suggest
2 that Stephen Hawking in his physical condition is a physical
3 threat to others, is a threat to others in any way.

4 Now, we don't want children to be harmed emotionally
5 by receiving text messages or things like that from
6 someone -- and I'm not suggesting Stephen Hawking would ever
7 do anything like this, but someone in his similar condition,
8 we can limit his access to these devices. We can order that
9 he not have access to the devices. And at the first hint
10 that the person has access to the devices, then you can
11 revoke their bond and take their bond away and order them to
12 remain detained while their case is pending.

13 But it is a relevant consideration. And I think it is
14 a consideration that rebuts the presumption in favor of
15 detention, that Mr. Koch does suffer from cerebral palsy.
16 Now, people suffer from it in varying degrees. He appears
17 okay as he's sitting there. He walks with his feet
18 pronated. He can't run. His balance is very poor. His
19 ability to physically assault anybody is severely limited.

20 And the belief that under these circumstances where he
21 could be placed on pretrial supervision on electronic
22 monitoring, ordered to counseling and ordered not to have
23 any contact whatsoever to Internet access devices, that he
24 somehow is a threat to the community is one that I don't
25 think the evidence would support.

1 Just to be honest, I think the FBI's own actions in
2 this case reflect their lack of concern about Mr. Koch as a
3 threat, a physical threat to others.

4 Admittedly, their patience was tried based upon the
5 Internet activity that they saw that seemed to be continuing
6 over and over again. But even when they executed the search
7 warrant on September 24, 2012 where they had all the
8 information that was in the search warrant, including all
9 the information about the Billy Elliot actors, all the
10 requests that were made of the Billy Elliot actors, there
11 was no attempt to place Mr. Koch under arrest at that
12 juncture.

13 It was only after they learned through the Canadian
14 authorities that there had been earlier contacts with a
15 Canadian teenager who actually did fall for the ruse and did
16 in fact send images of himself engaged in sexually explicit
17 activity that the whole tenor of the government's approach
18 to Mr. Koch changed.

19 Now, what's important to note is all of that activity,
20 except for the Ariella Gold Facebook friend request in
21 November of 2011, the activity concerning the 15-year-old,
22 occurred before the execution of that search warrant.

23 I know it may be difficult following along with the
24 dates as they're being conveyed by the agent from the stand,
25 but the affidavit makes it clear, when you look at the

1 affidavit, which is an exhibit in this case, that that
2 activity took place before the execution of the search
3 warrant.

4 The offense conduct that's alleged in the complaint
5 itself took place before the FBI executed the search warrant
6 on September 12 -- or September 24 of 2012. And they only
7 learned about that activity from the Canadian authorities at
8 the end of December, on December 26, and then again on
9 January 4 when an ICE agent communicated with someone from
10 Canada who was investigating these activities that actually
11 took place before the execution of the search warrant.

12 Now, I would agree that it is very disturbing that
13 apparently someone using the Ariella Gold Facebook account
14 sent the ten-year-old a friend request after the execution
15 of the search warrant. I don't think the evidence is clear
16 who did that at this juncture. Anybody who could have
17 accessed the Ariella Gold Facebook account could have sent
18 that friend request.

19 But be that as it may, that's not the determination.
20 Whether that behavior shows poor judgment, whether it shows
21 a criminal mind, that's not the issue here. The issue here
22 is at this stage, at the detention determination stage, is
23 whether or not a 23-year-old young man with cerebral palsy
24 is a danger to the community or a flight risk.

25 Now, he has shown the ability to travel on his own.

1 We admit that. He has traveled to watch shows in different
2 cities and things of that nature.

3 But again, his passport has already been turned over
4 to pretrial services. He would be under electronic
5 monitoring. There are conditions that can be placed upon
6 him, obviously an order not to travel at all and only to be
7 able to be released from electronic monitoring or from his
8 home for doctor visits and the like, those types of orders
9 mitigate in favor of granting a bond in this case.

10 This is the very beginning stages, I think, of what's
11 going to be a very long and complicated matter. And I think
12 the conditions, now that the charges are pending against Mr.
13 Koch and obviously he has been made aware and apprised of
14 the potential penalties that he faces, which the government
15 may assert makes him more likely to be a flight risk, I
16 would just submit makes him more likely to follow the
17 conditions of bond, especially considering the circumstances
18 of his life are such that granting him a bond at this stage
19 would not be a threat to society in any way or would be a
20 threat to justice with Mr. Koch fleeing the Court's
21 jurisdiction.

22 Admittedly, I wish there was a situation where I could
23 say that his parents, that there aren't any issues there,
24 but I would submit to Your Honor that there are a lot of
25 people in circumstances like Mr. Koch's father who, whether

1 or not they engaged in the activity, had made mistakes in an
2 otherwise exemplary life. He worked 32 years at the same
3 company. He is retired from that company. He has provided
4 a stable life for himself and his wife and children
5 throughout his entire life.

6 If Your Honor feels that placement at his parents'
7 home would be inappropriate because of his father's
8 conviction in state court for a matter that was -- the
9 offense conduct occurred back in 2005, I was advised that
10 the grandparents' home is also available and would ask that
11 at least pretrial services be ordered to at least
12 investigate the grandparents' home as a possible placement
13 as well, if being placed with his mother and father -- or
14 not being placed with them, but being permitted to reside
15 with his mother and father under conditions Your Honor can
16 impose is not appropriate in light of his father's history,
17 his grandparents' home, I've been told, is appropriate and a
18 place where they would consent to their grandson being able
19 to reside with them during the pendency of this case.

20 All I would say, Your Honor, is every criminal
21 defendant is presumed innocent. The true determination,
22 notwithstanding the seriousness of the charges, is whether
23 or not an individual -- when it comes to the issue of
24 bond -- is whether or not an individual criminal defendant
25 is truly a threat to society or a flight risk.

1 Based upon the conditions Your Honor has the authority
2 and the ability to impose and based upon the professionalism
3 of our pretrial services department, I believe that there
4 are conditions that are sufficient to warrant Mr. Koch's
5 release on bond at this time.

6 Thank you.

7 THE COURT: Thank you, Mr. Bryan.

8 Any rebuttal, Mr. Sullivan?

9 MR. SULLIVAN: Judge, just very briefly.

10 He made that comment about anybody could have sent the
11 message being Ariella Gold in November of 2012, but I think
12 Agent Liberti testified that Ariella Gold was logged on that
13 day, and that the IP address came back to the same IP
14 address which came back to the Koch residence. So not just
15 anybody. It has to be somebody from that house that logged
16 in and sent that message.

17 And just to clarify for the record, we have the
18 indictment for Mr. Bryan, the indictment that Mr. Koch pled
19 guilty to. Just to be clear, two of the counts happened in
20 2005, but Count 3, also which he pled guilty to, happened in
21 September 2008. So his sexual activity with his nieces
22 occurred over a three-year period. It was not just 2005. I
23 want to make that clear.

24 THE COURT: Thank you, Mr. Sullivan.

25 The motion is taken under advisement.

1 Mr. Koch, I'm remanding you back to the United States
2 marshal for custody pending my decision on the motion.

3 Anything further from the United States?

4 MR. SULLIVAN: No. Thank you, Judge.

5 THE COURT: Mr. Bryan, anything further for Mr.
6 Koch?

7 MR. BRYAN: No. Thank you, Judge. Thank you for
8 your patience.

9 THE COURT: Being no further business before the
10 Court in this case, we are in recess.

11 THE DEPUTY CLERK: All rise.

12 (Proceedings concluded at 3:15 p.m.)

13
14 C E R T I F I C A T E

15
16 I certify that the forgoing is a correct
17 transcript from the record of proceedings in the
18 above-entitled matter.

19
20 S/Caroline Mahnke

3/6/13

21 Caroline Mahnke, RMR, CRR

Date

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